Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	**CC Docket No. 97-11**
Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996	

REPLY COMMENTS OF TELEGLOBE USA, INC.

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I. INTRODUCTION AND SUMMARY

In these Reply Comments, Teleglobe USA, Inc. ("Teleglobe") supports the comments filed in this proceeding by those parties who argue for a broad definition of "extension" consistent with both the plain language of Section 402(b)(2)(A) of the Telecommunications Act of 1996 ("1996 Act")[1/] and the congressional intent behind it.[2/] As proposed, the NPRM's definition of "extension" does not accomplish this goal. Rather, it does nothing but retain the very Section 214 authority that Section 402(b)(2)(A) intended to eliminate. It does this in two respects.

First, by limiting "extensions" only to expansions which reach new territory, the Commission's definition defies not only common sense, but also the statutory text, sensible policy and congressional intent.

1/ Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

2/ Comments of Bell South at 7; Comments of GTE at 5; Comments of Ameritech at 10; Comments of Southwestern Bell at 2; Comments of Bell Atlantic and NYNEX at 2; Comments of Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") at 10.

Second, the Commission's proposed definition of "extension" completely excludes international services from the scope of Section 402(b)(2)(A). Such a distinction cannot be supported by the statute's language, underlying congressional intent or past Commission precedent. Indeed, these sources unambiguously point to the inclusion of international services within the 402(b)(2)(A) exemption.

Teleglobe thus urges the Commission to define an "extension" as any augmentation connected to a carrier's previously authorized facilities, irrespective of geographic considerations. Such a definition would allow a carrier to: (1) extend service to additional international locations connected to an existing network; (2) add capacity on routes to already authorized destinations; (3) establish diverse routes in order to serve currently authorized destinations; and (4) extend service to additional destinations by routing calls through previously authorized ones. In doing so, this definition would be faithful to the legislative language, implement congressional intent, and produce logical and consistent results.

II. ARGUMENT

A. The Commission Should Implement Section 402(b)(2)(A) To Ease The Ability Of All Carriers To Expand The Scope Of Their Wireline Networks

The NPRM proposes to define an "extension of a line" as "a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach."[3/] The NPRM correspondingly proposes to define a "new line" as "projects that increase the capabilities of a carrier's existing network within an area it already sevices."[4/] These definitions, in the words of Bell Atlantic and NYNEX, "cannot be squared with the language of the new Act and the Commission's own previous interpretations of the section

[3/] NPRM ¶ 21.

[4/] Id.

214 requirement."[5] Moreover, as the Commission itself recognizes, these definitions "create the anomaly that second lines would receive more regulatory scrutiny than the initial extended line," a result that is clearly contrary to the pro-competitive, deregulatory thrust of the 1996 Act.[6]

1. The NPRM's Proposals Are Illogical And Contradict The Language Of The Statute

The NPRM's proposed definitions are illogical and contradict the clear language of the statute, which specifically provides that "[t]he Commission shall permit **any** common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of **any** line. . . ."[7] As Bell South points out, the Commission's tortured definitions do not come close to giving full effect to the term "any" in Section 402(b)(2)(A).[8] To the contrary, they tightly limit the scope of 402(b)(2)(A) to only a small subset of what logically should be considered "extensions." In particular, as the NPRM as well as other commenters note, the plain meaning of the term "extend" encompasses both the expansion of area and the expansion of scope.[9] By proposing to exclude the latter category from the purview of Section 402(b)(2)(A), the Commission draws an arbitrary and illogical distinction between area expansion and capacity expansion.[10]

5/ Joint Comments of Bell Atlantic and NYNEX at 2.

6/ Comments of GTE at 5.

7/ 1996 Act, § 402(b)(2)(A) (emphasis supplied).

8/ Comments of Bell South at 5.

9/ Comments of GTE at 4; NPRM at ¶ 7. See also Comments of Pacific Telesis at 4-5.

10/ Comments of Ameritech at 7.

2. The NPRM's Proposals Are Inconsistent With The Congressional Intent Behind Section 402(b)(2)(A) and the Entire 1996 Act

The NPRM's proposals are also inconsistent with the Congressional intent behind both Section 402(b)(2)(A) specifically and the 1996 Act generally. **First**, the NPRM's proposals significantly circumscribe Congress' express purpose to eliminate the "arcane requirement that phone companies must [f]ile **any** line extension with the Commission."[11/]

MCI implies that this conclusion is wrong by arguing that Congress, by exempting "extensions" but not "new" lines from Section 214, intended to retain some regulatory scrutiny over the latter.[12/] However, this argument does nothing to support the position that the Commission should define the term "new" line so as to exclude what would logically be considered an "extension." At most it may demonstrate that the Commission should maintain some distinction between an "extension" and a "new" line.

Second, the Commission's proposed definitions of "new line" and "extension" fly in the face of Congress' intent in enacting the 1996 Act in the first place. Specifically, the legislative intent behind the 1996 Act is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[13/] The NPRM's proposed definition of "extension" thwarts rather than implements this intent.

The Commission is "confident" that it can correct for any anomalies (and presumably any corresponding anti-competitive effects) that its proposals create through the exercise of its forbearance authority.[14/] It may be right. However, Congress did not intend that it

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11/ Statement of Senator Robert Dole, 141 Cong. Rec. S7881, S7898 (June 7, 1995) (emphasis supplied).

12/ Comments of MCI at 6.

13/ Joint Statement of Managers, S. Conf. Rept. No. 104-230, 104th Cong., 2nd Sess. (1996), at 69; NPRM ¶ 9.

14/ NPRM ¶ 26.

should do so. Rather, Congress intended that the Commission follow its clear directive to "permit **any** common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of **any** line. . . ."[15/] The Commission should take this opportunity to do just that.

3. The NPRM's Proposals Serve No Legitimate Policy Objective

In addition to being semantically illogical, the NPRM's proposed definitions of "new" line and "extension" do not serve any legitimate policy objective. MCI disagrees, asserting that the original intent of Section 214 was not only to prevent the "useless duplication of facilities that could result in increased rates being imposed on captive telephone ratepayers,"[16/] but also to prevent inefficient and anti-competitive investments.[17/] However, MCI loses sight of the dramatic changes that are occurring in the marketplace as a result of the 1996 Act. In this new competitive environment "the market, rather than regulatory approval by the Commission, will impose the necessary discipline on carriers as they extend and deploy new facilities."[18/] This is so regardless of whether the carrier is simply adding capacity on a route to a given destination, establishing another route to serve that same destination, or serving a new destination through an existing one.

B. The Commission Should Not Exclude International Lines From The Scope Of 402(b)(2)(A)

Teleglobe agrees with the comments filed by GTE and TLD which argue that the Commission should not exclude international lines from the scope of 402(b)(2)(A). As with the its proposal to define "extension" in terms of territory but not capacity, the NPRM's proposal to

15/ 1996 Act, § 402(b)(2)(A) (emphasis supplied).

16/ NPRM ¶ 1.

17/ Comments of MCI at 5-8.

18/ Comments of The Independent Telephone & Telecommunications Alliance ("ITTA") at 6.

deny Section 402(b)(2)(A)'s exemption to international services is not only illogical, but is also inconsistent with the plain language of the statute, past Commission precedent and Congressional intent.

1. The NPRM's Proposals Are Illogical And Inconsistent With The Plain Language Of The Statute

The NPRM's proposal to define "extension" as "a line that allows the carrier to expand its service **into geographic territory that it is eligible to serve, but that its network does not currently reach**"[19] is both illogical and inconsistent with the plain language of the statute. Specifically, the NPRM is proposing to define "extension" purely in terms of geographic expansion. Yet at the same time, the Commission imposes arbitrary political limits on what constitutes geographic expansion. Thus, the Commission's proposed definition is internally illogical. It is also completely inconsistent with the plain language of the statute, which requires the Commission to exempt extensions made by "**any** common carrier" of "**any** line." [20] Clearly, the statute makes no distinction between types of carriers or types of services: **all** extensions are exempt.[21]

The NPRM attempts to avoid this clear congressional mandate by erecting a new barrier through a classification of carriers as "eligible" or "ineligible." Conveniently, the Commission defines an "eligible" carrier as one providing domestic service; "ineligible" carriers are those that provide international service:

> Under the definition we propose, a carrier may be "eligible" to serve certain territory without any actual "authorization" to serve it. In such a case, although a carrier might need to obtain specific regulatory authorizations under the Communications Act before initiating service to given territory. . . in the domestic context, it would nevertheless be "eligible" to serve that territory for purposes

[19] NPRM ¶ 21 (emphasis supplied).

[20] 1996 Act, § 402(b)(2)(A) (emphasis supplied).

[21] Comments of TLD at 2.

> of Section 402(b)(2)(A) of the 1996 Act . . . In the international context, carriers are eligible to serve only those countries for which they have received specific Section 214 authorizations . . ."[22/]

As TLD points out, this distinction between "eligible" and "ineligible" carriers is a completely new regulatory concept that the NPRM fails to justify.[23/] The NPRM simply asserts its position in a footnote, pointing neither to the statute, nor to Commission precedent, for support.

2. The NPRM's Proposals Serve No Legitimate Policy Objective

Contrary to the position of the NPRM and several commenters, there are no legitimate policy reasons for excluding international services from the scope of Section 402(b)(2)(A). In particular, the NPRM states: "[c]arrier initiation of international service raises legal, economic, policy, and facility-specific issues different from those raised by the provision of domestic service."[24/] These concerns are both misplaced and irrelevant. **First**, they are misplaced because, as GTE points out, the NPRM's proposal to retain jurisdiction in the international area serves no purpose under Section 214 itself. As GTE points out, the market for international services is competitive, and thus the Commission "should not be concerned whether a carrier is overbuilding facilities since captive ratepayers would not be required to subsidize these actions."[25/] **Second**, these concerns are irrelevant because, as TLD notes: "[c]ongress has already made an unequivocal policy choice on the matter: Section 402(b)(2)(A) itself does not distinguish between domestic and international services."[26/] It is not the Commission's job to second-guess this choice.

22/ NPRM ¶ 23, fn. 39.

23/ Comments of TLD at 3.

24/ NPRM ¶ 32.

25/ Comments of GTE at 6.

26/ Comments of TLD at 4.

Additionally, several commenters justify their position by pointing to the Commission's recent action in its Streamlining Order.[27] In particular, these commenters note that the Commission has already adopted new regulations for international service providers. Any further modifications are thus unnecessary.[28] However, the Streamlining Order did not -- and was not designed to -- implement Section 402(b)(2)(A). The Commission merely acknowledged this statute, and indicated, without explanation or opportunity for comment, its preliminary interpretation.[29] This is hardly a sufficient response, particularly given that its proposed interpretation constitutes a marked departure from Commission precedent.

3. The NPRM's Proposals Conflict With Past Precedent

The Commission's interpretation of "extension" also conflicts with past Supreme Court and Commission precedent. Under the Supreme Court's decision in Texas & Pacific[30] and the Commission's decision in Mackay Radio,[31] it is the presence or absence of Section 214 approval that renders a carrier "eligible" or "ineligible" to provide service into a new territory.[32] Thus the Commission cannot now use such a regulatory distinction to define what is or what is not a line extension. Nor does anything in these cases otherwise support an interpretation of "extension" which ends at the United States' borders.

Moreover, existing Commission precedent decidedly points to a definition of "extension" which encompasses the international expansion of a carrier's network. The

27/ Comments of U.S. West at 3; Comments of Sprint at 3; Comments of Bell South at 8-9 (citing In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements, 11 FCC Rcd. 12884 (1996)).

28/ Id.

29/ Streamlining Order, ¶ 10.

30/ Texas & P. Ry. Co. v. Gulf, C & S.F. Ry. Co., 270 U.S. 266, 278 (1926) ("Texas & Pacific").

31/ Mackay Radio and Tel Co., 6 F.C.C. 2d 562, 574 (1938) ("Mackay Radio").

32/ Comments of TLD at 6-7.

Commission has, in recent years, conditioned nearly sixty international Section 214 authorizations on the following:

> [S]hould [the authorized carrier] obtain any interest in facilities beyond the authorized . . . points for the purpose of providing common carrier services, including private lines services, between the U.S. and other international points, such action would constitute an extension of lines under Section 214 of the Act.[33/]

The Commission's statement that these cases are merely "staff level"[34/] decisions is no answer to why nearly sixty different Section 214 decisions define a key communications concept without the support of the full Commission.

Even more significant is that there are, in fact, full Commission decisions which support the interpretation of "extension" as geographic expansion in the international as well as the domestic context. Specifically, the Commission In the Matter of American Telephone & Telegraph Co. was faced with a carrier's request to acquire additional capacity in an Indian Ocean satellite.[35/] In turning down this request, the Commission stated:

> We do not believe a grant of this authority would be consistent with our responsibilities under Section 214 of the Communications Act of 1934. It would permit the carriers to **extend lines to new points not previously directly served** without first obtaining the certificate required by Section 214 from this Commission.[36/]

33/ See Comments of TLD at 7 (citing, among others, In the Matter of BT North America, Inc., 9 FCC Rcd. 6851 (1994)).

34/ Streamlining Order ¶ 10.

35/ 29 F.C.C. 2d 229 (1971).

36/ Id. at 237 (emphasis supplied); Comments of TLD at 10. The Commission also, on at least two other subsequent occasions, implied that the term "extension" is not limited to the domestic area. See In the Matter of International Record Carriers, 76 F.C.C. 2d 115, 135 (1980); In the Matter of Western Union International, Inc., 76 F.C.C. 2d 167, 183 (1980); Comments of TLD at 9.

Thus, the Commission clearly concluded that an extension for purposes of Section 214 included the expansion into new territory abroad.

4. The NPRM's Proposals Conflict With Congressional Intent

The NPRM's proposal to exclude international services from the scope of Section 402(b)(2)(A) conflict with congressional intent in two significant respects. **First**, Congress was likely aware of the Commission's past interpretation of "extension" when it enacted Section 402(b)(2)(A).[37] Given that Congress did not specifically disavow this interpretation, the Commission should not now seek to do so itself, particularly when, as discussed above, it provides no logical reason for doing so.[38]

Second, the Commission's proposals directly conflict with the spirit as well as the letter of 1996 Act and Section 402(b)(2)(A). The driving forces behind the 1996 Act are competition and deregulation. The NPRM's proposals thwart these forces by limiting competition and increasing regulation in the international services market. As USTA points out, such a result is doubly inappropriate in light of the recent success of the United States and the rest of the World Trade Organization in reaching a truly global telecommunications trade agreement.[39]

C. The Commission Should Adopt A Definition Of "Extension" Which Exempts Any Augmentation Of A Carrier's Facilities From Section 214 Requirements

In light of the foregoing, Teleglobe agrees with the many commenters who urge the Commission to take this opportunity to adopt a definition of "extension" which clearly and logically implements Congress' deregulatory intent, while remaining faithful to past Commission

[37] Comments of Bell South at 4.

[38] Comments of TLD at 10.

[39] Comments of USTA at 2.

precedent.[40/] It can do this by adopting its own alternative proposal to define "extension" as "any augmentation of lines in a carrier's network, heretofore subject to Section 214 certification, without distinguishing between "new" lines from "extensions.""[41/] This definition is internally logical because it treats all additions to an existing network equally. It is consistent with Congress' intent and prior Commission practice because **all** line extensions be exempt from Section 214 requirements. Thus, a carrier (whether providing domestic or international services) will be able to serve a new destination through a previously authorized one, add capacity on an existing route to an authorized destination and establish new routes to serve that same destination.

In adopting this proposed alternative definition of "extension," the Commission would not be ignoring congressional intent that the Commission continue to regulate the construction and operation of "new" lines. Rather, the Commission would be implementing congressional intent by refusing to create artificial and irrational distinctions between types of network extensions. The Commission would still retain jurisdiction over "new" lines, i.e., lines which are not connected to -- and hence do not extend -- a carrier's existing network. This would apply, for example, to a company entering the telecommunications market for the first time.

III. CONCLUSION

In sum, the Commission's proposed definitions of "extension" and "new line" accomplish nothing but "keep the Commission in the Section 214 approval business much more than necessary in the [1996 Act] environment."[42/] Such a result is antithetical to congressional intent in enacting Section 402(b)(2)(A) and to the Commission's own market-oriented goals. The

40/ See generally, Comments of Bell South at 7; Comments of GTE at 5; Comments of Ameritech at 10; Comments of Southwestern Bell at 2; Comments of Bell Atlantic and NYNEX at 2; Comments of TLD at 10.

41/ NPRM ¶ 35.

42/ Comments of Ameritech at 3.

Commission should instead adopt its proposed alternative definitions, which would not only fully meet congressional objectives, but would also be both internally consistent and consistent with prior Commission precedent.

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